



JAMES H. "JIM" BROWN  
COMMISSIONER OF INSURANCE  
STATE OF LOUISIANA

P.O. Box 94214  
BATON ROUGE, LOUISIANA 70804-9214  
PHONE (225) 342-5900  
FAX (225) 342-3078  
<http://www.idi.la.us>

## **DIRECTIVE NUMBER 00-156**

**August 11, 2000**

### **Professional Employer Organizations**

#### **Statutory Authority**

Insurance is a business affected with the public interest and it is the duty of the Commissioner of Insurance to regulate that business in all its phases. LSA-R.S.22:2. No person is authorized to transact the business of insurance in Louisiana without complying with the provisions of the Insurance Code. LSA-R.S.22:3.

#### **Purpose**

There are certain aspects of the operations of Professional Employer Organizations ("PEOs") that constitute the business of insurance and fall under the regulatory authority of the Louisiana Department of Insurance. The purpose of this directive is to communicate the authority of Louisiana Department of Insurance with respect to its regulation of PEOs. The following is intended to address those issues that have been made known to the Department of Insurance, and it is not meant to limit the scope of the Department's regulatory authority over any insurance activities which may not be addressed in this directive.

#### **Regulatory Issues**

- A. Whether the PEO is acting as an unauthorized insurer or unlicensed agent in its business operations.
- B. Whether the PEO is undermining the experience rating of the workers compensation system by merging premium and loss information of its clients.
- C. Whether the PEO's clients are being issued policies of insurance setting forth premium for each line of insurance.
- D. Whether all injured workers of the employer entering into a PEO arrangement have access to benefits provided by the PEO.
- E. Whether the PEO is engaging in unfair trade practices.
- F. Whether there are penalties associated with intentionally violating the provisions of the Insurance Code.

**Directive Number 00-156**  
**August 11, 2000**

**Issues**

**A. Whether the PEO is acting as an unauthorized insurer or unlicensed agent in its business operations.**

Louisiana Revised Statute 22:3 states in pertinent part:

No person shall be authorized to transact or shall transact a business of insurance in this state without complying with the provisions of this Code.

Further, LSA-R.S. 22:1249(A) states:

§1249. Transacting a business of insurance by unauthorized insurer defined:

A. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized insurer or by any person acting with actual or apparent authority of the insurer, on behalf of the insurer, is deemed to constitute the transaction of an insurance business in or from this state:

- (1) The making of or proposing to make, as an insurer, an insurance contract.
- (2) The solicitation, taking or receiving of any application for insurance contract.
- (3) The receiving or collection of any premiums, commissions, membership fees, assessment, dues, or other considerations for any insurance contract or any part thereof.
- (4) The issuance or delivery of contracts of insurance to residents of this state or to corporations or persons authorized to do business in this state.
- (5) The transaction of any matter subsequent to the execution of such a contract and arising out of it.
- (6) The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the insurance laws of this state.
- (7) The solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof.
- (8) The transaction of any kind of insurance business specifically recognized as transacting business within the meaning of the statutes relating to insurance.
- (9) The dissemination of information as to coverage or rates, or forwarding application(s), or delivery of policies or contracts, or inspection of risks, the fixing of rates or investigation or adjustment of claims or losses or the transaction of matters subsequent to effectuation of the contract and arising out of it, or any other manner of representing or assisting a person or insurer in the transaction of risks with respect to properties, risks, or exposures located or to be performed in this state.
- (10) The making or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
- (11) The offering of insurance or the transacting of insurance business, or the offering of an agreement or contract which purports to alter, amend, or void coverage of an insurance contract.

**Directive Number 00-156**  
**August 11, 2000**

Additionally, LSA-R.S. 22:1523 prohibits:

the publishing or printing in any newspaper, magazine, periodical, circular letter, pamphlet, or in any other manner or publish by radio broadcasting in this state, any advertisement or other notice either directly or indirectly setting forth the advantages of or soliciting business for any insurer, which has not been authorized to do business in Louisiana.

The following activities are representative of the “transacting the business of insurance”:

- (1) Acting as an insurer for certain risks of its client companies without certificates of authority, or securing insurance coverage on behalf of its client companies without appropriate licenses in violation of LSA-R.S. 22:3 and 22:1249.1.
- (2) Avoiding the prior approval requirements of the Louisiana Insurance Rating Commission in the treatment of workers’ compensation rates, rules and plans in violation of LSA-R.S. 22:1401, et seq.
- (3) Avoiding the prior approval requirements of the Department of Insurance in the use of policy forms in violation of LSA-R.S. 22:620 and 22:211.
- (4) Providing group health coverage in a manner that does not comply with the small group statutory and regulatory requirements in violation of federal and state law.
- (5) Acting as an unauthorized insurer or unauthorized group insurer by assuming the risk of loss for the client’s obligations towards its employees, and spreading the risk over a large pool of employees obtained through several clients in violation of LSA-R.S. 22:3 and 22.1249.1.
- (6) Acting as an insurance solicitor, agent or broker by securing insurance coverage on behalf of the client for the client’s risk, or purchasing insurance coverage in the name of the PEO for all of the “co-employees” in violation of LSA-R.S. 22:1113. More specifically,
  - Soliciting prospective clients based solely or primarily on representation of insurance costs advantages.
  - Advising a prospective client regarding insurance coverage.
  - Selling a policy of insurance to a client or employee.

**Directive Number 00-156**  
**August 11, 2000**

**B. Whether the PEO is undermining the experience rating of the workers' compensation system by merging premium and loss information of its clients.**

The Commissioner of Insurance has broad authority to examine and investigate the affairs of every person engaged in the business of insurance. LSA-R.S. 22:1215. The Commissioner's investigatory and regulatory authority is triggered when a PEO must act on behalf of its client with respect to that client's insurance obligations.

The Louisiana Insurance Rating Commission ("LIRC") has authority to regulate rates and rules of inadequacy, excessiveness, and unfair discrimination. LSA-R.S. 22:1402, 1404, and 1407. This rating authority is invoked when PEO practices involve calculation or manipulation of the workers' compensation premium for a client.

Oversight of rates and rules is explicitly within the scope of the LIRC's authority:

The purpose of this Part is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of this Part. Nothing in this Part is intended (1) to prohibit or discourage reasonable competition, or (2) to prohibit or encourage, except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This part shall be liberally interpreted to carry into effect the provisions of this Section. LSA-R.S. 22:1402.

It is not in the public's best interests to have any PEO or employer circumvent or mask claim history through pooling arrangements other than those approved by the LIRC. Louisiana's workers' compensation system is effective because individual employers are held responsible for purchasing workers' compensation at adequate, non-excessive and fair rates. This implicitly means that an employer's rate must reflect its insurer's LIRC-approved manual rate, adjusted by the insurer's LIRC-approved rules and plans, and must reflect the employer's loss experience in a manner based on sound insurance principles, accepted methodologies, and LIRC approved rules or plans.

Unregulated PEO practices circumvent established safeguards protecting the stability of the workers' compensation systems. Practices that manipulate or circumvent an insurer's LIRC-approved rates and rules, the LIRC-approved experience rating plan, the LIRC-approved classification system, or manipulates and misrepresents the employer's exposure base are not in the public's best interests. These activities will cause inadequate, excessive, or unfairly discriminatory rates for not only the individual risk but also the workers' compensation market as a whole. Such activities, if unchecked, will result in unavailable or unaffordable workers' compensation rates for many. This threatening instability will negatively impact the insurance industry and all Louisiana policyholders and citizens.

**Directive Number 00-156**  
**August 11, 2000**

**C. Whether the PEO's clients are being issued policies of insurance setting forth premium for each line of insurance.**

LSA-R.S. 22:634 provides that "every policy shall be delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance." Additionally, "each policy delivered to the insured shall have the full and accurate dollar amount of the premium disclosed on the policy, which shall be inclusive of all fees, charges, premiums, or other consideration charged for the insurance or for the procurement thereof." LSA-R.S. 22:212(I), 627(C).

**D. Whether all injured workers of the employer entering into a PEO arrangement have access to benefits provided by the PEO.**

In a traditional employer arrangement, a workers compensation policy covers any and every employee of the insured employer. It is likely that in a PEO arrangement, only the "leased" employees will be afforded coverage, creating a gap in coverage for "non-leased" employees.

PEOs that "bundle" benefits make it impossible to maintain a proof of coverage record for each of their clients. Further, LSA-R.S. 22:1534 prohibits this type of arrangement, except with respect to life, health and accident or disability insurance, and states in pertinent part:

No insurer or any person on behalf of any insurer shall make, offer to make, or permit any preference or distinction in property, marine, casualty, or surety insurance as to form or policy, certificate, premium, rate, benefits, or conditions of insurance, based upon membership, nonmembership, employment, or of any person or persons by or in any particular group, association, corporation, or organization, except as noted herein.

Separate policies permit the client-employer, the insurer, the Department of Insurance, the Louisiana Insurance Rating Commission, and other state regulators to track loss experience and coverage using the traditional employer arrangement, and also allow a means to identify and provide for any gaps in coverage.

**E. Whether the PEO is engaging in unfair trade practices.**

The Insurance Code specifies the following are unfair trade practices:

- Making, issuing, circulating, or causing to be made, issued or circulated any estimate, illustration, circular or statement, sales presentation, omission or comparison that misrepresents the benefits, advantages, conditions or terms of any policy issued or to be issued. LSA-R.S. 22:1214.

**Directive Number 00-156**  
**August 11, 2000**

- Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, announcement or statement containing any assertion, representation or statement with respect to the business of insurance. LSA-R.S. 22:1214.

**F. Whether there are penalties associated with intentionally violating the provisions of the Insurance Code.**

It is incumbent on insurance companies, agents, and PEOs that the insurance-related activities or services of the PEO comply with all Louisiana statutes, regulations, rules, and directives. To the extent that such activities or services do not comply with the Insurance Code, penalties may be applicable, including, but not limited, to the following.

LSA-R.S. 22:7 states:

- A. Whoever intentionally violates, aids, abets, counsel, or procures another person to intentionally violate any provision of this Code, upon conviction, unless a specified penalty is provided elsewhere in this Code, and in addition to any revocation, suspension or forfeiture of any license, power or privilege provided for in this Code, if a corporation, shall be fined not more than fifty thousand dollars; a natural person shall be fined not more than ten thousand dollars, or imprisoned with or without hard labor for not more than five years, or both.
- B. The provisions of this section shall not be applicable to a violation of any provision of Part XXIV of Chapter 1 of this Code, being R.S. 22:1111 through R.S. 22:1119, both inclusive.

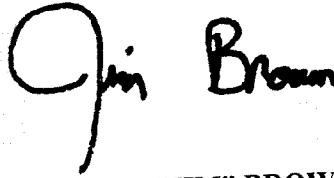
LSA-R.S. 22:1447 states, in part:

If any insurance company or rating organization fails to comply with a written directive or order issued by the Louisiana Insurance Rating Commission pursuant to this Part within thirty days of the issuance thereof, the Louisiana Insurance Rating Commission may levy and receive a fine of up to twenty-five thousand dollars.

**Directive Number 00-156**  
**August 11, 2000**

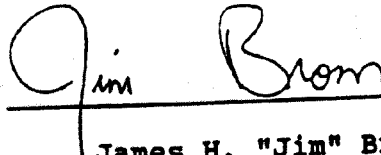
**ALL PROFESSIONAL EMPLOYER ORGANIZATIONS ENGAGING IN ACTIVITIES THAT CONSTITUTE THE BUSINESS OF INSURANCE ARE DIRECTED TO IMMEDIATELY COMPLY WITH TITLE 22. PEOS FAILING TO COMPLY WILL BE SUBJECT TO THE PROVISIONS OF LSA-R.S. 22:1250, 22:1113, AND 22:1447 AND OTHER PENALTIES IN ACCORDANCE WITH THE LOUISIANA INSURANCE CODE AND OTHER APPLICABLE PROVISIONS OF THE LOUISIANA REVISED STATUTES.**

The Department of Insurance urges that each PEO meet with Department staff to receive guidance in ensuring its activities with respect to the business of insurance comply with the laws of our state. Direct your inquiries to Brenda S. Nation, Executive Counsel.

A handwritten signature in black ink that reads "Jim Brown". The signature is written in a cursive, flowing style.

**JAMES H. "JIM" BROWN**  
**Commissioner of Insurance**

This Department intends to strictly enforce Section 668. A finding that an insurer is using illegal contractual provisions and/or is engaging in unfair claim settlement practices with respect to reimbursement issued on chiropractic services can lead to the imposition of fines or disciplinary action against an insurer's certificate of authority.

A handwritten signature in cursive script that reads "Jim Brown". The signature is written in dark ink and is positioned above a horizontal line.

James H. "Jim" Brown  
Commissioner of Insurance